

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

WP(C).No. 26524 of 2006(G)

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AGAINST THE ORDER IN IA. 904/2005 & I.A.451/05 IN  
OP.ELECTION.10/2005 of MUNI-MAGI.COURT, PERAMBARA

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PETITIONER:

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NAGATH VIMALA, W/O.KUNHANANDAN NAIR,  
VANNARATH HOUSE, CHERUVANNUR VILLAGE,  
MUYIPOTH DESOM, P.O. MUYIPOTH.

BY ADV. SRI.P.K.SURESH KUMAR  
SMT.PRIYA VIJAYAN

RESPONDENTS:

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1. K.P.SUJATHA,  
W/O.ARAVINDAKSHAN, KACHERIPARAMBIL HOUSE,  
CHERUVANNUR VILLAGE, MUYIPOTH DESOM,  
P.O.MUYIPOTH.
2. K.KAMALA,  
W/O.NADUKKANDY RAGHHAVAN,  
CHERUVANNUR VILLAGE, MUYIPOTH DESOM.
3. SHYNI P.P.,  
W/O.MURALEEDHARAN,  
MADATHIL MEETHAL HOUSE,  
-DO- -DO- .

BY ADV. SRI.K.P.DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

APPENDIX:

EXT.P1: COPY OF E.OP.10/05 FILED BEFORE MUNSIF-MAGI. COURT, PERAMBRA BY PETITIONER

EXT.P2: COPY OF IA 904/05 IN E.OP. 10/05 FILED BEFORE MUNSIF-MAGI. COURT, PERAMBRA BY PETITIONER

EXT.P3: COPY OF ORDER DT.29.8.06 IN IA 451/06 IN 10/05 FILED BEFORE MUNSIF-MAGI. COURT, PERAMBRA BY PETITIONER

//True copy//

PA TO JUDGE.

**M.SASIDHARAN NAMBIAR,J.**

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W.P.(C) .NO.26524 OF 2006  
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Dated 4<sup>th</sup> December 2006

**JUDGMENT**

Petitioner is election petitioner in Election O.P.10/2005 on the file of Munsiff court, Perambra. First respondent is the successful candidate whose election was challenged in election O.P. Petitioner filed I.A.451/2006, an application for permission to inspect the counter foils of ballot papers. Munsiff dismissed it under Ext.P3 order. Ext.P3 order is challenged in this petition filed under Article 227 of Constitution of India. Learned counsel appearing for petitioner argued that court below dismissed the application for the reason that if the petition is allowed, secrecy of the election will be lost and therefore petition cannot be allowed. Relying on the decision of Apex court in **Neelalohithadasan Nadar v. George Mascrene (1994 (1) KLT 887 SC)** learned counsel appearing for petitioner argued that the reasoning given by the court below is unsustainable and therefore the order

is to be quashed. Learned counsel appearing for first respondent relying on the decision of Apex court **Bhabhi v. Sheo Govind and other (AIR 1975 SC 2117)** which was affirmed by the Apex court in **Achuthanandan v. Francis (2001 (1) KLT 740 SC)** argued that petitioner cannot be granted an opportunity to indulge in a roving inquiry in order to fish out materials to justify his pleading to declare his election void. It is argued that even the affidavit filed in support of the application shows that petitioner has no definite case and only wanted to compare the signatures to find out whether there was double voting by same person and in such circumstance application could not have been allowed and was rightly dismissed.

2. Apex court in Bhabhi's case (supra) analysing earlier decisions laid down the following principles to be applied by the court before granting permission to inspect the ballot papers.

“(1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on

frivolous, vague and indefinite allegations;

(2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;

(3) The court must be prima facie satisfied on the materials produced before the court regarding the truth of the allegations made for a recount;

(4) That the court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties;

(5) That the discretion conferred on the court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void and

(6) That on the special facts of a given case sample inspection may be ordered to lend

further assurance to the prima facie satisfaction of the court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.

The said principles were re-iterated by a three Judge Bench of the Apex court in Achuthanandan's case (supra). Argument of learned counsel appearing for first respondent was that in view of decisions of the Apex court Ext.P3 order is perfectly legal and correct.

3. Later a three Judge Bench of Apex court in Neelalohithadasan Nadar's case (supra) considered the legality of the permission granted by High court to the parties to inspect counterfoils of voters who allegedly committed double voting. Their Lordships held

“Since the names of the voters who were alleged to have double voted, had specifically been pleaded in the Election Petition (as amended from time to time) and

the Recrimination petition, it was necessary to co-relate their names with the electoral rolls and the counterfoils of the ballot papers so that in case of double voting or impersonated voting, the impure element in the election process could be identified and retrieve from the election package. The primary purpose thus was to purify the electoral process and not to hunt or hound the voter's choice, when exercised validly and freely. It is for that purpose that the Court, in the interest of justice, to facilitate a quick trial permitted the parties to inspect beforehand the records but after the framing of the requisite issues arising from the pleadings of the parties and not earlier. This approach could not be termed as permitting a 'roving or fishing' enquiry, as it is some times described in cases of a claim for recount."

4. Case of petitioner in election petition is

that certain voters have committed double voting. Details have been specifically pleaded in the election petition. As per the application filed before the trial court petitioner sought permission to examine the counterfoils of the votes of the said voters. It was rejected by court below on the ground that if allowed it would affect the secrecy of election. The prayer in the application was not for the purpose of recounting. The secrecy of the ballots which is sacrosanct will not be violated by allowing the examination of the counterfoils of the ballot papers. It is more so, when the primary purpose was to identify the impure element in the election process. When names of voters who allegedly committed double voting were pleaded specifically with details in the election petition and to co-relate their names with electoral rolls and counter foils of ballot papers permission was sought to inspect the counterfoils of the ballot papers of the alleged double voting, and the petition is allowed and permission to grant the counterfoils granted, it cannot be termed permitting a

roving or fishing enquiry as canvassed by learned counsel appearing for respondent. The decision of the Apex court in Neelalohithadasan Nadar's case strengthens that conclusion. In such circumstances, dismissal of the application under Ext.P3 order is unsustainable and illegal. It is quashed. Court below is directed to grant permission to petitioner to examine the counterfoils of ballot papers of the persons who allegedly double voted in the presence of Junior Superintendent of the court and first respondent or his counsel.

Writ petition is allowed.

M.SASIDHARAN NAMBIAR,  
JUDGE.

uj.